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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,752	01/16/2002	John D. Puskas	065071-9052 US04	7521

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EXAMINER

LAYNO, CARL HERNANDZ

ART UNIT	PAPER NUMBER
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3766

DATE MAILED: 08/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/051,752	Applicant(s) PUSKAS, JOHN D.	
	Examiner Carl H. Layno	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-120 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-11, 13-36 and 49-120 is/are allowed.
- 6) ☒ Claim(s) 12, 37, 39-44, 46 and 47 is/are rejected.
- 7) ☒ Claim(s) 38, 45 and 48 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/5/06, 7/24/06</u> . | 6) <input checked="" type="checkbox"/> Other: <u>QPOD20</u> . |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on June 5, 2006 has been entered.

Priority

2. It should be noted that the applicant claims benefit of priority filing, the earliest date of which is August 26, 1997.

Information Disclosure Statement

3. Acknowledgment is made of applicant's Information Disclosure Statements (PTO-1449s), which were received by the Office on June 5, 2006 and on July 24, 2006.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claim recites both a broad range of signal amplitudes (1-40 Volts) and a specific range of signal amplitudes (2-6 Volts). This is indefinite, since it is confusing as to what range the applicant intends. See QPOD20, section I attached. In addition, it is unclear whether or not there is one “means for transmitting” or two different “means for transmitting”.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 37, 39-44, 46, and 47 are rejected under 35 U.S.C. 102(e) as being anticipated by Taylor et al (US 6,381,499) (Applicant's cited prior art).

In regard to claim 37, the Taylor et al (US 6,381,499) patent, cited as prior art by the applicant, describes a vagal nerve stimulation device (Fig.22) including clip stimulation electrodes (Leads/Clips at positions #2 and #3) located in the neck of the patient. Although the clips shown are invasive, they may alternatively be non-invasive (col.5, lines 23-26). These electrode clips are activated by a control circuit 222 and an electrical stimulating device 220. In use, the electrodes electrically stimulate the vagus nerves in order to slow or temporarily stop the heart from beating to enable coronary surgery to take place (Abstract). Note that this reference

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has the benefit of a priority filing date of July 3, 1997. See U.S Application Serial No. 08/887,527 attached.

In regard to claim 39, the control circuit 222 performs the function of the “means for actuating” (col.12, lines 9-13).

In regard to claim 40, the clip electrodes could be of either polarity (+) or (-), or the same polarity, (See Figs. 7, 8, and 9).

In regard to claims 41 and 42, the Taylor et al device may deliver continuous electrical pulse trains for up to 10 seconds (col.2, lines 19-21).

In regard to claims 43 and 44, the stimulation pulses are transmitted at a frequency of 25 Hz (col.5, line 36).

In regard to claim 46, the stimulation pulse duration of the Taylor et al therapy signal is 0.1 msec (col.5, line 37).

In regard to claim 47, the stimulation signal of Taylor et al has an amplitude of 20 volts (col.5, line 37).

Allowable Subject Matter

8. Claim 12 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

9. Claims 38, 45, and 48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 1-11, 13-36, and 49-120 are allowed.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

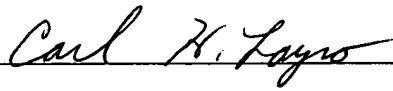
The Ginn et al 08/887,527 U.S. Patent Application, now abandoned, is cited for its pertinent priority filing date. This is the priority reference for the Taylor et al (US 6,381,499) patent cited *supra*.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CARL LAYNO
PRIMARY EXAMINER

CHL
8/1/2006